IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 50/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 1st December, 2006

Heard Shri S. M. Bhangde, learned counsel for the appellant and Shri V.S. Bapat, learned counsel for the respondents.

2. By this appeal, the appellant/plaintiff challenges the Judgment and decree dated 18th July, 2005 passed by the 11th Ad hoc Additional District Judge, Nagpur in Regular Civil Appeal No. 281/2003 dismissing the appeal filed by the plaintiff against the judgment and decree dated 16.4.2003 passed by the 4th Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No. 248/98.

3. The appellant/ plaintiff filed the above referred suit seeking declaration and permanent injunction. The plaintiff sought declaration that he is a lessee over a portion of the suit plot on monthly rent of Rs. 200/-. According to the plaintiff, the defendant no.1 inducted him as a tenant in the year 1994 and the plaintiff has been running a Hotel in a tiny shed. It is the case of the

plaintiff that defendant no.1 was not issuing receipts on the ground that he would have to pay more tax to the Corporation and since relations between the parties were cordial the plaintiff did not insist for receipts. In February 1998, the defendant no.1 tried to forcibly dispossess the plaintiff where upon he lodged a report at Ajni Police Station. The plaintiff sought declaration that he is the tenant of defendant no.1 and also sought permanent injunction. The defendant no.2 who is the owner of the suit plot by virtue of the sale-deed dated 24.12.1974 was joined during the pendency of the suit. The defendant also filed counter claim seeking recovery of possession of the encroached portion of the suit plot against the plaintiff.

4. The trial Court upon appreciation of the evidence led by the parties held that the plaintiff had not proved tenancy in respect of the suit plot. The trial court further held that the plaintiff had tresspassed upon the suit plot and consequently dismissed the suit and allowed the counter claim of the defendants. Before the trial court the plaintiff relied upon two certificates Exhs. 66 and 67 issued by Corporation, Receipt (Exh. 76) as well as registration certificate (Exh. 77). The plaintiff also relied upon oral evidence to prove his possession from the year 1994. The defendant led evidence to prove that the plaintiff was earlier carrying on the business on the foot

path and after his structure was demolished in February 1998 he encroached upon the suit plot. The trial Court did not accept the evidence of the plaintiff in so far as documents Exhs. 66, 67, 76 and 77 are concerned. The trial Court held that same did not advance the case of the plaintiff since they were in the name of Premchand Gandhi and also suspicious. In so far as the evidence of the plaintiff that he tendered rent by money order in the year 1998 is concerned, the trial court refused to place any reliance in the absence of any evidence regarding creation of tenancy. The trial Court also further held that the plaintiff has not proved any agreement of lease either oral or documentary as required under the Maharashtra Rent Control Act. The trial Court also held that there was no explanation as to why lease agreement was not executed and registered though mandatory in terms of the Maharashtra Rent Control Act. Since the title of the defendant was established the trial court decreed the counter claim. The lower appellate court concurred with the findings given by the trial court. In so far as the application of Maharashtra Rent Control Act is concerned, the lower appellate Court held that the provisions therein were not applicable since according to the plaintiff the lease was created in the year 1994 and the Act came into force in the year 2000.

5. Mr. Bhangde, the learned counsel appearing for

the appellant submitted that the evidence led before the trial court clearly establishes that the plaintiff was in possession of the portion of the suit plot as a tenant of defendant no.1 from the year 1994. Further it is submitted that both the courts have misconstrued the evidence led by the plaintiff and have held that the plaintiff has not proved the tenancy in respect of the structure existing in the suit plot. He further submitted that the trial court wrongly cast burden of proving the lease agreement under the Maharashtra Rent Control Act upon the plaintiff where in fact the Act was not applicable in the year 1994. The learned counsel submitted that the documents clearly establish the possession of the plaintiff as a tenant from the year1994 and, therefore, the decrees passed by both the courts deserve to the quashed and set aside.

6. Per contra, Shri Bapat, learned counsel appearing for the respondents submitted that both the courts have rightly held that the plaintiff has not proved tenancy in respect of the structure existing on the suit plot and the finding given by both the court that the plaintiff has trespassed in the suit plot is borne out from the evidence on record. He then urged that there are concurrent findings of facts and, therefore, no interference is called for in this appeal.

7. Having considered the submissions made by the

learned counsel for the parties and having perused the Judgments passed by both the courts below I find no merit in the present appeal. Perusal of the Judgment given by the lower appellate court clearly reveals that the lower appellate court has considered the relevant factors while passing impugned Judgment and decree. The finding of the lower appellate court that the evidence on record does not establish tenancy of the plaintiff in respect of the structure in the suit plot cannot be said to be perverse to warrant interference in second appeal. The lower appellate court, in my opinion, has rightly discarded the documentary evidence as suspicious. The lower appellate court has correctly appreciated the evidence led by the parties and has come to the conclusion that the plaintiff has failed to prove his possession as tenant from the year 1994. Since the plaintiff was claiming tenancy from the year 1994 which was denied by the defendants the burden to prove tenancy which includes terms of tenancy was on him. The evidence on record does not establish the tenancy between the plaintiff and the defendant no.1 as contended by the plaintiff. On the contrary defence evidence clearly established that after the illegal structure on the footpath erected by the plaintiff was demolished by the Corporation the plaintiff encroached upon the suit plot in February 1998. In my opinion, the finding of the lower appellate Court that the plaintiff has failed to prove his tenancy has been correctly arrived at

and by no stretch of imagination it can be said that the said finding is perverse. Once, the case of the tenancy set up by the plaintiff is not accepted both the courts below were justified in granting decree for possession as claimed by the defendants in the counter claim filed by the defendants.

8. For the reasons aforesaid, I do not find any merit in the above appeal. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

C.A. No. 473/06:

In view of the dismissal of the appeal, nothing survives in this application. Hence, the application stands dismissed as infructuous.

Judge

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